



September 26, 2001

Ms. Ruth Reyes
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-4324

Dear Ms. Reyes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152464.

The City of El Paso (the "city") received a request for copies of the winning bids for a specified maintenance contract. You indicate that you have released some responsive information that was not marked confidential and privileged by Motorola, Inc. ("Motorola") and Radio Technologies & Communications ("RTC"). You claim, however, that the submitted information may be excepted from disclosure pursuant to section 552.110 of the Government Code. You make no argument regarding the proprietary nature of the submitted information. However, you state, and provide documentation showing, that you notified Motorola and RTC of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exception you claim and have reviewed the submitted information.

Section 552.110(b) of the Government Code excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." An entity will not meet its burden under section 552.110(b) by

a mere conclusory assertion of a possibility of commercial harm. *Cf. National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of the requested information. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure). Motorola did not respond to the notice. Therefore, we have no basis to conclude that the submitted information pertaining to Motorola contains proprietary information that must be withheld from disclosure. *See* Gov't Code § 552.110 (stating that a trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision is excepted from disclosure). Accordingly, you must release the portions of Motorola's bid proposal that you withheld from the requestor.

However, RTC did respond to the notice by asserting that the release of employee rosters, verbiage, and style contained within its proposals could undermine its operations and could be used to recruit its employees.¹ We note, however, that information pertaining to employee rosters and qualifications is not typically excepted from disclosure under section 552.110(b). *See* Open Records Decision Nos. 319 (1982) (finding information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not ordinarily excepted under section 552.110). Furthermore, RTC has not demonstrated based on specific factual evidence that the release of information relating to any verbiage or style contained within either of its proposals would cause RTC substantial competitive harm. Consequently, you may not withhold any information contained within the submitted proposals relating to qualifications, verbiage, or style pursuant to section 552.110(b) of the Government Code.

However, we note that the submitted proposals contain email addresses that are excepted from disclosure pursuant to section 552.137 of the Government Code. The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. This new exception makes certain e-mail addresses confidential.² Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

¹ Although RTC also argues that pricing and customer list information from its proposals should be withheld from disclosure, we do not address such information since this information has already been released to the requestor.

² House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). We have marked the email addresses contained within the submitted proposals that are excepted from disclosure pursuant to, section 552.137 of the Government Code. In all other respects, you must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 152464

Enc. Marked documents

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